

Written evidence submitted by the Social Democratic and Labour Party (SDLP), relating to the effectiveness of the institutions of the Belfast/Good Friday Agreement inquiry (GFA0053)

About the SDLP

The Social Democratic and Labour Party was founded in 1970 as an anti-sectarian political movement with the aim of reconciling the people of the island in a united, just, and prosperous new Ireland. Working at Westminster, the Northern Ireland Assembly and in councils, SDLP representatives are dedicated to addressing the multiple divisions – sectarianism, partition and economic inequality – which limit the potential of our region.

Executive Summary

- The Good Friday Agreement is rooted in the fundamental principles of the SDLP, and we believe those principles remain both relevant and essential,
- The aforementioned divisions persist in our society, and relationships in Northern Ireland, North and South and across these islands, must still be informed by the principles set out in the declaration of support at the start of the Agreement – “partnership, equality and mutual respect” – aimed at achieving “reconciliation, tolerance and mutual trust”.
- But as fresh and relevant as those core values and aims are, the implementation of the Agreement has been marred by poor faith, political cynicism, politically expedient (but ultimately damaging) changes to the architecture of the Agreement, and more recently the huge external shock of Brexit.
- Each strand of the Agreement would benefit from review, renewal and in some cases, substantial reform.
- Strand One institutions have been characterised by cycles of crisis and collapse, and even in periods with less disruption, Executives have been seen to be ineffective (with some exceptions) at meaningfully addressing Northern Ireland’s deep-rooted socio-economic challenges. The values of consensus and mutual consent have been warped into tribal veto and stalemate.
- We recommend substantial changes to mechanisms for electing the offices of joint First Ministers and Assembly Speaker in order to end the cycle of collapse, along with a range of recommendations to improve performance and governance. Several of our suggested reforms have already been proposed by our MPs as part of the legislative process at Westminster.
- Strand Two has been the Cinderella of the three institutional strands, plagued by veto and poor implementation (by one party in particular) but its underperformance has received less attention than that of Strand One, despite the Agreement being clear that both were deemed interlocking and interdependent.

- We recommend a fundamental review of the operation of Strand Two, leading to deepened formalisation of North-South structures beyond simply the (currently inactive) NSMC and its limited implementation areas. There is a particular need to deepen and expand the work of the NSMC in light of Brexit, not least given the specific remit given to the NSMC in the Protocol on Ireland/Northern Ireland. The ministerial veto over attendance at NSMC must also be removed.
- Strand Three has been recently hampered by the political shock of Brexit, which has fundamentally and negatively impacted the historical achievement of reconciliation across these islands. While there is room for sensible institutional review, most pressing is a recommitment by the UK state to prioritising relationships on these and the achievement of 1998 over hard Brexit obsessions.
- The SDLP has always supported review and reform of the operation of the Agreement's institutions consistent with its core principles. But technical institutional reform alone will not be sufficient to improve effectiveness in the absence of a recommitment to those core principles, and a move away from a politics based on tribalism and veto.

Introduction

The 1998 Good Friday Agreement was rooted in the principles of power sharing and partnership. It secured a framework for the three sets of relationships across these islands and secured a platform of guaranteed rights. Its three strands have seen varied episodes of performance and we have seen its rights promises neglected and frustrated. This has created conditions of chronic dysfunction and loss of public trust, especially in the strand one institutions.

The SDLP has always been an advocate of continuous review of the Agreement, which is why we ensured that review mechanisms were built into the original Agreement in 1998. It is clear now that serious review is necessary, and there are multiple possible avenues for reform – some of which the SDLP has attempted to implement through amendments to Northern Ireland-related Bills at Westminster in recent years.

As the 25th anniversary of the Good Friday Agreement approaches, there is a clear argument for a comprehensive, inclusive review and positive renewal of the Agreement to ensure that this framework is used properly to protect all communities, including those new and emerging communities since 1998, including those who do not designate as either unionist or nationalist to promote effective governance and to examine the mechanisms which currently are being manipulated to prevent the formation and functioning of both the Executive and North-South Ministerial Council.

Discussions on reform should not, however, act as a deflection from the need for parties to respect the mandate of the Assembly election earlier this year, and to urgently form an Executive. We should bear in mind that the public will have little, if any, patience for protracted negotiations on the operation of the institutions of the Agreement. While many revere the 1998 Agreement as a transformative moment in terms of conflict resolution and codification of pluralist values, they have sadly lost trust in the institutions' ability to deliver effective government: any reform discussion must be focused and, ideally, conducted alongside a functioning Executive.

Strand One

Key points

- A return to process of nomination and joint election of First Ministers by members of the Northern Ireland Assembly.
- Inclusion of a third threshold, the endorsement of two thirds of Members of the Legislative Assembly (MLAs) for the joint election of First Ministers.
- The replacement of the current mechanism of election Speaker of the NI Assembly with a mechanism for endorsement of two thirds of Members of the Legislative Assembly (MLAs) to unlock progress and to allow for an evolution away from dependence on designation
- Titles of First Minister and Deputy First Minister should be changed to reflect the equal and joint nature of this office and these roles.
- Petition of Concern to be reviewed and corrective action taken consistent with the original intention outlined in Agreement
- Review and upgrade to procedures and structures of NI Assembly including enhancing capacity for oversight, scrutiny, accountability and inclusion.

Strand One of the Good Friday Agreement provided for a democratically elected Assembly in Northern Ireland with executive and legislation authority and built-in safeguards which were designed to protect the rights and interests of all sides of the community. It is self-evident that these institutions have not worked as was intended in 1998 and instead have been manipulated and misapplied to the extent that public trust in these institutions has significantly dwindled. A system designed for cooperation has been operated with a mindset of confrontation.

Election of First Ministers by the NI Assembly, designation and executive formation.

The 1998 Agreement originally provided for the joint election of the First Ministers by the Assembly. At this time, any two members elected to the NI Assembly could be jointly nominated, there was also an ability for rival joint nominations the Assembly could choose to elect. The 2006 St Andrews Agreement resulted in a move away from this arrangement, replacing it with a situation where largest party in the largest designation nominates the First Minister and the largest part in the second largest designation nominates Deputy First Minister, removing of the mandating power of and accountability to the Assembly and essentially privatising the roles of First Ministers to the two largest parties.

The SDLP supports a reversion to the mechanism of electing First Ministers as provided for in the original agreement, via open joint nomination and election of First Ministers by the Assembly. This would strengthen accountability to the Assembly, reaffirming it as the prime source of authority for governance.

The SDLP recognises that the current threshold for the election of First Ministers relies solely on cross-community support, and this has proven to be a barrier for the establishment of a NI Executive. We welcome the changes in society over the last 25 and embrace the equal rights of those who aspire to a New Ireland, those who wish to maintain the union and those who may choose not to take a view on the constitutional issue. We believe it will be constructive to broaden the options for measuring support for joint election of First Ministers, speakers and other symbolic votes, beyond parallel consent. This would allow a transition beyond the one-party vetoes, which have been repeatedly deployed and threatened by DUP and Sinn Féin, and could help to limit the excessive emphasis on constitutional identity.

Precedent for these thresholds already exists within the 1998 Agreement. The endorsement of two thirds of the Assembly was accepted in the Northern Ireland Act 1998 as sufficient threshold for collectively mandating the calling of an Assembly election. If parties in the Northern Ireland Assembly have, in effect, accepted that a threshold two thirds of all members are sufficient consensus the same measure should be sufficient consensus to avoid Assembly stagnation or to avoid an unnecessary election.

We note also calls for reform, or indeed ending, designation. With greater numbers of MLAs who do not express a view on the constitution, such conversations are inevitable. Our proposals to make greater use of the threshold of two thirds of MLAs in both elections for Speaker and First Ministers reflects an acknowledgment that the mechanisms of double majority voting have reinforced mutual veto and dysfunction and there needs to be reform. Nevertheless, as a party which has always been defined by more than our constitutional view, with social democracy and anti-sectarianism, we also know that Northern Ireland remains a society of divergent constitutional aspirations and identities – which is why we have a consociationalist system of Government in the first place. We are open to discussing proposals on reform, but will remain mindful of the need for our structures to properly reflect the identities and aspirations of all in this society.

Election of Speaker

The Northern Ireland (Ministers, Elections and Petition of Concern) Act 2022 was intended by the UK Government to deliver aspects of the New Decade, New Approach deal 2020. It is clear now that the stability measures which were included in this Bill overlooked the serious implications of the failure to elect a speaker, and with this veto in place fail to put power in the hands of voters in the event of repeat elections.

Within the structures of the institutions, the Assembly Commission, clerks, cross-party deputy speakers, the cross-party Business Committee as well as the Procedures committee and Assembly Executive Review Committee all have a role in conditioning and informing the role of the Speaker in both the Assembly's corporate regard and Chamber proceedings. The Speaker also does not have a role in overseeing government or have any policy making, budgetary or legislative powers.

Therefore, experience, convention and ancillary workings of Assembly business mean that the operationally non-partisan Speaker's post no longer needs to be subject exclusively to cross community support as outlined in the original Agreement.

In this context the SDLP believe that the existing threshold requiring cross-community support for the election of the Speaker should be replaced by a threshold of the endorsement of two thirds of MLAs.

Amend the titles of First Minister and Deputy First Minister

The roles of First Minister and Deputy First Minister are joint and equal in every way and the SDLP believes that changing the title to 'Joint First Minister' would better reflect the mutually dependent and equal nature of the roles.

Not only would amending these titles better reflect the joint nature of the roles, but it would also help to redress the tribalisation we have seen of these roles, especially at election time. The equalisation of these titles should also be accompanied with more visible joint accountability mechanisms such as, but not limited to requiring both First Ministers to attend and respond to Assembly questions at the Executive Office Question Time.

Petition of Concern

The petition of concern is a mechanism designed to act as a safeguard against any decisions taken by the NI Executive that would impact negatively on human rights and equality. Unfortunately, in the decades since the Agreement there has been frequent misuse and manipulation of this mechanism for purposes that have run counter to its intention including the blocking of equality legislation and thwarting investigations into complaints about the conduct of MLAs.

Whilst the Northern Ireland (Ministers, Elections and Petition of Concern) Act 2022 did circumscribe some of the abuses of the petition of concern and offer some filtering criteria for its deployment, the SDLP believes that further corrective action should be implemented to be consistent with the original intentions of the Good Friday Agreement of joint-up scrutiny on rights and equality issues. We believe that a special procedure should be in place to 'call in' for examination of proposed legislation in conformity with equality requirements including ECHR and Bill of Rights.

Procedures and structures

To further effective government in Northern Ireland, consideration should be given to reviewing the procedures and structures of the Northern Ireland Assembly, including its capacity for oversight, scrutiny and accountability.

The Cross-community Executive voting provision, introduced at St Andrews, allows for a further opportunity for veto and should be reformed. Our previous proposals for alternative weighting and thresholds would allow for this.

A separate Budget Committee would enable greater oversight and scrutiny of the multi-annual budget which the Assembly has proclaimed to have moved to.

Lessons can be learned from the success of the Assembly's Public Accounts Committee as a cross-cutting committee and consideration should be given to extending this to other cross-cutting issues to strengthen the ability of committees to track policy and performance across government.

Consideration should also be given for the establishment of more dedicated Public Bill Committees to scrutinise Bills.

There is also a strong case for civic voices to supplement the input of Assembly members on committees especially for both pre-legislative scrutiny and post-legislative scrutiny. This would involve the inclusion and insight from under-represented groups such as women, young people, people with disabilities, LGBTQIA+ people, people from ethnic minority backgrounds, carers, and others.

Strand Two

Key points

- Implementation of Strand Two has been even more sporadic and curtailed than that of Strand One
- The operation of NSMC meetings must not be contingent on ministerial veto
- A fundamental review of the operation and scope of Strand Two is now required
- Impact of Brexit on cross-border arrangements provides conditions for review and renewal
- Role of the NSMC implementation bodies
- It is now timely for a review of North/South cooperation and potential for expansion.

Strand two of the Agreement focuses on the North/South Institutions on the island of Ireland. The North/South Ministerial Council (NSMC) was established in the Good Friday Agreement to bring together those with executive responsibilities in Northern Ireland and the Irish Government, to develop consultation, co-operation, and action within the island of Ireland including through implementation on an all-island and cross-border basis on matter of mutual concern and interest. The purpose of the NSMC was to ensure effective development and co-ordination of policies to meet the needs in both parts in the island.

Strand two has suffered from underdevelopment and lack of adequate implementation. The defined areas were never intended to be exhaustive, have evolved over time and have been substantially impacted by Brexit and the NI Protocol – a review is necessary and timely.

Under-development of Strand Two

There has been a failure to meaningfully develop the envisaged North/South cooperation on matters of mutual interest due to a combination of NI Executive instability and collapse, profligate DUP veto and failure by governments to fully engage. There is scope to improve upon policy cooperation and strategic planning and a need for dedicated funding, in a formula similar to EU funding.

There were early attempts to establish formal frameworks and infrastructure for North/South cooperation which did not come to full fruition. During the June 2002 NSMC plenary, there was agreement for the establishment of a North/South Consultative Forum who was to be made up of representatives of civil society, north and south with a steering committee drawn from NI Civic Forum and social partners in the South. The Forum would involve a twice-yearly conference. The Consultative Forum was stunted in its progress in the context of Assembly collapse and sub-optimal engagement. Pursual of this Forum could provide a platform for proposals on expansion and development of cross border cooperation and projects and could reanimate and contemporise proposals for a civic forum.

As well as removing the right of veto over ministerial attendance at NSMC, a greatly enhanced NSMC work programme and expanded areas of implementation are now necessary.

Impact of Brexit

Since the decision to leave the EU and its institutions and given that common membership of the EU and its institutions was germane to the Good Friday Agreement, it has been clear that work needs to be undertaken to renew and contemporise some mechanisms. Consideration particularly must be given to paragraph 17 in Strand two of the agreement, below, which provides an opportunity to use this mechanism to mitigate the democratic deficit created by Brexit - NSMC, representing the views of Ministers in Northern Ireland, should be used as a channel of representation for NI input in relevant EU legislation, regulations and funding.

“The Council to consider the European Union dimension of relevant matters, including the implementation of EU policies and programmes and proposals under consideration in the EU framework. Arrangements to be made to ensure that the views of the Council are considered and represented appropriately at relevant EU meetings”.

Strand Three

Key points

- Progress is best made when Dublin and London are working together as equals and friends. Strand 3 has been hampered by factors which are largely political, rather than structural.
- External factors including the deepening of devolution in Wales and Scotland, or the latter's independence, may reconfigure the role of British-Irish cooperation.
- Expansion of cooperation of British-Irish Council on different levels including bi-lateral and multi-lateral cooperation, including to compensate for the loss of joint working via the EU.
- Opportunities exist to optimise networks across both islands to improve information sharing and improve policy making.
- Both governments, as co-guarantors of the Good Friday Agreement, have a responsibility to ensure the proper functioning of the British-Irish Intergovernmental Conference.

Strand three of the Good Friday Agreement focuses on British-Irish institutions and relationships and is vital to the success of the Agreement. A British-Irish Council (BIC) was established to promote the harmonious and mutually beneficial development of the totality of relationships on these islands, made up from representatives of the British and Irish Governments, devolved institutions, representatives of the Isle of Man and Channel Islands. Strand three also made provision for the British-Irish Intergovernmental Conference (BIIGC) which sought to promote bi-lateral cooperation at all levels on matters of mutual interest within the competence of both governments.

Development of devolved government across these islands.

Like Strand two, external developments have also furthered the context for a review of Strand three of the Agreement, not least the impact of Brexit on relationships across these islands, but also in the context of devolution in other parts of the UK. At the time of the 1998 Agreement, devolved government in Scotland and Wales was not yet in place and therefore 25 years on and with the experience and knowledge of devolved government in those areas, a review is timely.

Bi-lateral and multi-lateral cooperation

Given that there are eight jurisdictions which make up the BIC, further consideration and emphasis should be on promoting bilateral or multi-lateral arrangements under the auspices of BIC, with consideration given to increasing the secretariat provided to BIC and ensuring the capacity of that secretariat to track various arrangements including full Council, but also bi-lateral and multi-lateral agreements. The case can also be made for the expansion of areas of formal cooperation beyond the areas outlined in the original agreement. It should be explored how specialisms developing in one jurisdiction could be utilised for the benefit of cooperation across other jurisdictions to enable optimal funding and resourcing, but also to avoid unnecessary duplication when frameworks already exist for cooperation and information sharing,

As well as reviewing the areas and specialisms for expansion of cross-sectoral cooperation, consideration should also be given of how to share information and learning from across the different administrations. This may involve exploration of the joint-piloting of policies, initiatives, and services as well as secondments of civil servants between the administrations to share knowledge, improve policy making and build capacity.

British-Irish Intergovernmental conference

Years passing without a BIIGC being convened has undermined the perceived value of this platform. The BIIGC does make provision for devolved Ministers to attend the conference, and this is an area in which NI Executive Ministers should seek to feed into. The SDLP believe that the BIIGC should meet their obligations to convene on a more regular basis and given the context of Brexit and the lack of a functioning Government, it is pertinent that this channel of British-Irish cooperation be utilised.

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